90-753

Supreme Court, U.S.
FILED
OCT 12 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

RONALD NEWELL LAND,

PETITIONER

VS.

UNITED STATES OF AMERICA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RONALD NEWELL LAND, PRO SE

839 SOUTH GERMANTOWN RD.
CHATTANOOGA, TENNESSEE 37412

QUESTIONS PRESENTED

A. CAN A DISTRICT COURT ACCEPT A PLEA OF GUILTY WITHOUT DIRECTLY ASKING A DEFENDANT IF HE UNDERSTANDS OR OTHERWISE ELICITING ON THE RECORD THAT THE DEFENDANT UNDERSTANDS THE NATURE OF THE CHARGES AGAINST HIM.

B. CAN A DISTRICT COURT DETERMINE THAT THERE IS A FACTUAL BASIS FOR A PLEA OF GUILTY WITHOUT THE DEFENDANT BEING ASKED IF HE UNDERSTOOD THE NATURE OF THE CHARGES AND WITHOUT HIM DESCRIBING HIS PARTICIPATION IN THE ALLEGED OFFENSE IN ANY WAY.

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RULES AND STATUTES

Rule 11, Federal Rules of Criminal Procedure — 5,6,7,8, 10

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Petitioner, RONALD NEWELL LAND, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in the above-entitled cause on May 18, 1990.

I.

OPINION BELOW

The opinion of the Court of Appeals is attached hereto as Appendix A. The order denying the petition for rehearing and suggestion of rehearing en banc is attached as Appendix B. The opinion of the District Court for the Northern District of Georgia, Rome Division, is attached as Appendix C.

II.

JURISDICTION

The opinion of the Court of Appeals for the Eleventh Circuit was entered on May 18, 1990 and the order for rehearing was denied on July 24, 1990. The jurisdiction of this Court is invoked pursuant to **62 Stat. 928, 28 U.S.C. §1254 (1)**.

III.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Amendment V to the Constitution of the United States which requires that citizens shall not:

> " . . . be deprived of life, liberty or property without due process of law . . . . "

IV.

STATEMENT OF FACTS

Petitioner became a target of a drug investigation sometime in early 1985. In November of 1985 his home was searched by agents of the Federal Bureau of Investigation, the Internal Revenue Service, and the Georgia Bureau of Investigation. The Petitioner was not arrested.

On March 13, 1987, the Petitioner was indicted by a Federal Grand Jury and self surrendered to the F.B.I. The Petitioner pled not guilty to all charges on March 20, 1987, but subsequently changed his plea to guilty on advice of counsel on July 6, 1987.

During the change of plea proceeding the district judge never asked the Petitioner if he understood the nature of the charges to which he was pleading guilty. The district judge never elicited any description of the Petitioner's conduct which gave rise to the charges and arrest. The record is silent as to these two areas of inquiry. The district court accepted the Petitioner's plea of guilty.

V.

REASONS FOR GRANTING THE WRIT

A. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO RE-ESTABLISH WHAT IS ACCEPTABLE TO UNITED STATES DISTRICT COURTS WHEN ACCEPTING A GUILTY PLEA AND WHAT MUST BE PLACED IN THE RECORD OF THE HEARING.

Well over 90% of all federal cases are handled through the guilty plea process. **Rule 11, Federal Rules of Criminal Procedure** was established to protect defendants during the guilty plea process and to establish guidelines for district courts to follow during guilty plea hearings. These guidelines are to assure that a defendant's guilty plea is voluntarily entered. **Rule 11**, in pertinent part, states:

> **" . . . . the court must address the defendant personally in open court and inform him of, and determine that he understands the following. (1) the nature of the charge to which the plea is offered . . . . "**

In the case at bar, the district court **"found that [the] defendant understood the charges against him . . . "** The district court determined this without asking the defendant [Petitioner] personally if he understood the nature of the charges. The district court also determined this without anyone asking the Petitioner if he understood the nature of the charges. The record is completely silent as to the Petitioner's understanding of the nature of the charges to which he pled guilty.

This Court was explicit in McCarthy v. United States, 394 U.S. 459, when it stated:

> " Rule 11 expressly directs the district judge to inquire whether a defendant who pleads guilty understands the nature of the charge against him . . . . "
> McCarthy, supra.

In conjunction with assuring itself that a defendant understands the nature of the charges, a district court must satisfy itself that a factual basis exists for the plea of guilty. This Court clarified Rule 11 in McCarthy, supra when it stated:

> " . . . Rule 11 also requires the judge to satisfy that there is a factual basis for the plea. The judge must determine 'that the conduct which the defendant admits constitutes the offense charged in the indictment or information or an offense included therein to which the defendant has pleaded guilty.' Requiring this examination of the relation between the law and the acts the defendant admits having committed is designed to 'protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge."
> McCarthy, supra at 467

Two years later this Court further clarified its position on **Rule 11** in **Santobello v. New York**, **404 U.S. 257 (1971):**

> **"Fed.Rule Crim.Proc. 11, governing pleas in federal courts, now makes clear that the sentencing judge must develop, on the record, the factual basis for the plea, as, for example, by having the accused describe the conduct that gave rise to the charge." Santobello, supra.**

Since this Petitioner was not asked by anyone if he understood the nature of the charges to which he was pleading guilty, it cannot be found anywhere in the record of the proceeding. Also, since the Petitioner never described his conduct or commented in any way on the government's evidence, no valid factual basis could have been established according to the mandates of **McCarthy** and **Santobello**. The record is again completely silent as to the Petitioner being asked or directly saying anything as to the charge or the government's evidence.

The district court and the Court of Appeals erred in their decision not to grant the Petitioner's Writ of Habeas Corpus due to Rule 11 violations. These

decisions are contrary to this Court's explicit rulings in the past and goes against the very intent and heart of **Rule 11.** If a district court is able to "determine" that a defendant understands the nature of the charges without the defendant ever being asked, then a defendant's silence stands adequate enough to convict him. The past rulings this Court has made in **McCarthy** and **Santobello** are nullified by the district court and the Eleventh Circuit Court of Appeals rulings in this instant case. The Eleventh Circuit Court of Appeals is also in conflict with every one of their past decisions in **Rule 11** cases not to mention every other Circuit in the United States. To allow these rulings to stand sets a dangerous precedent to all future defendants who decide to use the plea process to dispose of their cases and effectively abolishes the intent of **Rule 11 (c) & (f)** completely.

VI.

CONCLUSION

This Court was explicit in **McCarthy** when it held that a defendant must be asked if he understood the nature of the charges to which he was pleading guilty. It was also explicit when it held that this determination must be evident in the record of the proceeding. To allow a district court to "determine" that a defendant understands the charges by mental telepathy (which is the only way it could have been determined in this defendant's guilty plea hearing) does not hold with this Court's rulings in either **McCarthy** or **Santobello**. To allow this sort of determination is dangerous to the majority of defendants involved in the federal system, since over 90% engage in the plea bargaining process.

Finally, for a district court to establish a valid factual basis based entirely on the government's recitation of their evidence and this Petitioner's silence is also contrary to **McCarthy** and **Santobello**.

If the district court's ruling and the Eleventh Circuit Court of Appeal's affirmation is allowed to stand, then **Rule 11 (c) and (f)** have lost their intended purpose and this Court's holding in **McCarthy** and **Santobello** have been rendered null and void.

Respectfully Submitted,

OCTOBER 1, 1990

RONALD NEWELL LAND, PRO SE
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CHATTANOOGA, TENNESSEE 37412

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

DO NOT PUBLISH

NO. 89-8761

Non-Argument Calendar

D.C. Docket No. 3-89-CV-03R(CR87-05R)

RONALD N. LAND,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern district of Georgia

(May 18, 1990)

Before HATCHETT, EDMONDSON, and COX, Circuit Judges.

PER CURIAM:

APPENDIX "A"

Ronald N. Land was sentenced in August, 1987, following a plea of guilty to three counts of a federal indictment.

Land filed petitions pursuant to 28 U.S.C. § 2255 attacking his convictions and sentence, alleging: (1) that his trial counsel was ineffective; and (2) that the trial court failed to comply with Fed. R. Crim. P. 11 in accepting his pleas of guilty. The district court denied relief. Finding no error, we

AFFIRM.

APPENDIX "A"

N THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

COURT OF APPEALS
ELEVENTH CIRCUIT
FILED
JUL 24 1990
MIGUEL J. CORTEZ
CLERK

NO. 89-8761

RONALD N. LAND,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

On Appeal from the United States District Court for the Northern District of Georgia

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ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

(Opinion May 18, 11 Cir., 1990, _____F.2d _____).
(July 24, 1990)

Before: HATCHETT, EDMONDSON, and COX, Circuit Judges.

PER CURIAM:

(X) The petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

( ) The Petition(s) for Rehearing are DENIED and the Court ~~having been~~ polled at the request of one of the members of the court ~~and a majority~~ of the Circuit Judges who are in regular active ~~service~~ not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are also DENIED.

( ) A ~~member~~ of the Court in active service having requested a poll ~~on the~~ reconsideration of this cause en banc, and a majority ~~of the judges~~ in active service not having voted in favor or it, Rehearing En Banc is DENIED

ENTERED FOR THE COURT

EMMETT R. COX

APPENDIX "B"

FILED IN CLERK'S OFFICE
U.S.D.C. - Rome

SEP 14 1989

LUTHER D. THOMAS, Clerk
By: X
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

UNITED STATES OF AMERICA

V.

RONALD N. LAND

CRIMINAL ACTION
CR-87-05R

ORDER

The defendant, Ronald N. Land, appeared before this Court on July 6, 1987, with attorney Steven H. Sadow, as attorney of record in the case. On that date the defendant moved to withdraw his plea of not guilty, and tendered a guilty plea to the Court. The plea of guilty was upon a negotiated plea arranged between the United States and the defendant.

The defendant now claims that his sentence should be vacated pursuant to 28 U.S.C. § 2255 becasue (1) the Court never inquired as to whether the defendant understood the nature of the charges against him and (2) that the defendant pled guilty upon reliance of the advice of his attorney, that he would most likely get probation, and that such reliance upon the advice

of his attorney constituted ineffective assistance of counsel.

The Court placed defendant under oath, addressed the defendant personally as to the nature of the charges against him, the elements of proof required before a jury would be authorized to convict him and the potential consequences as to each charge to which the defendant tendered a guilty plea. The defendant stated his plea was voluntary, that he was satisfied with the representation his lawyer had given him, the Court found that defendant understood the charges agasint him and the consequences of his plea, accepted the defendant's plea of guilty and approved the plea agreement.

The defendant clearly understood the potential consequences of his guilty plea and under oath stated a satisfaction with the representation he had received. The record clearly shows that the defendant voluntarily and knowingly entered his plea of guilty in this case, that the plea was entered without any coercion and that the defendant clearly understood the plea agreement entered into by him in this case. Defendant's claim of ineffective assistance of counsel is without merit.

The defendant further claims that the United States Parole Commission illegally used dismissed counts in the indictment in setting his parole and he claims that he should be repaid certain of the attorney's fees paid attorney Bobby Lee Cook, for his attorney's fees in this case. Neither of these complaints are appropriate for a proceeding pursuant to 28 U.S.C. § 2255.

The defendant also has moved for a personal appearance before the Court and for oral argument upon his motion. He desires that the Court order "Jail House Lawyer" Michael G. Michaels be transported to Court with the person of the defendant so that Mr. Michaels may speak on the defendant's behalf in support of the pending motion. The Court concludes that the assistance of a "Jail House Lawyer" is not needed by this Court and that such an oral hearing would be of no assistance to the Court in resolving the issue made in defendant's motion.

ACCORDINGLY, defendant's motion for personal appearance and oral argument is denied; defendant's claims for relief because of Rule 11 violations and ineffective assistance of counsel are without merit

and are denied; his claim for relief because of actions of the United States Parole Commission and his claim for repayment of attorney's fees paid to counsel in this case are not proper matters for consideration by this Court under 28 U.S.C. § 2255 and the relief sought is denied; and, this action is DISMISSED.

IT IS SO ORDERED, this the 14th day of September 1989.

HAROLD L. MURPHY
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing **PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT** was placed in the United States Mail with sufficient postage for Certified, Return Receipt Requested, and addressed as follows: Craig Gillen, AUSA, 1800 United States Courthouse, Room 1176, 75 Spring St.,S.W., Atlanta, Ga. 30335; and Solicitor General, U.S. Department of Justice, Washington, D.C. 20530.

On This 21st Day of Nov 1990.

Ronald Newell Land

RONALD NEWELL LAND, PRO SE
839 SOUTH GERMANTOWN RD.
CHATTANOOGA, TENNESSEE 37412

I make all the foregoing statements pursuant to **28 U.S.C. §1746** to the best of my knowledge, belief, and ability under the penalty of perjury.

Ronald Newell Land

RONALD NEWELL LAND